IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 18TH AUGUST 2006 / 27TH SRAVANA 1928

WP(C).No. 23511 of 2003(Y)

PETITIONER:

P.A.MICHAEL, AGED 42 YEARS,
S/O. ABRAHAM, PORIMATTATHIL, PANAMKUTTY P.O.,
ADIMALY, IDUKKI DISTRICT.

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
IDUKKI DISTRICT.

3. THE BLOCK DEVELOPMENT OFFICER,
OFFICE OF THE ADIMALI BLOCK DEVELOPMENT,
ADIMALI, IDUKKI DISTRICT

4. THE PROJECT OFFICER,
DISTRICT RURAL DEVELOPMENT AGENCY (DRDA),
PAINAVU, IDUKKI DISTRICT.

BY GOVERNMENT PLEADER SRI.T.T.MUHAMOOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP. 23511/2003)

EXT.P1: TRUE PHTOCOPY OF PROCEEDINGS DT. 16/2/82.

EXT.P2: TRUE PHOTOCOPY OF COMMUNICATION DT. 16/3/85.

EXT.P3: TRUE PHOTOCOPY OF COMMUNICATION DT. 28/8/87.

EXT.P4: TRUE PHOTOCOPY OF COMMUNICATION DT. 5/9/89.

EXT.P5: TRUE PHOTOCOPY OF NOTICE DT. 27/1/1990.

EXT.P6: DO. OF COUTNER AFFIDAVIT IN OP.8867/89.

EXT.P7: DO. OF JUDGMENT IN OP.8867/89.

EXT.P8: DO. OF REPORT DT. 14/5/93.

EXT.P9: DO. OF PROCEEDINGS DT. 2/9/93 OF COLLECTOR.

EXT.P10: DO. OF CLAIM STATEMENT DT. 10/6/93.

EXT.P11: DO. OF PROCEEDINGS DT. 2/4/97 OF SUB COURT, KATTAPPANA.

EXT.P12: TRUE PHOTOCPY OF DETAIL REGARDING WORKS.

EXT.P13: TRUE PHOTOCOPY OF COMMUNICATION DT. 25/6/97.

EXT.P14: TRUE PHOTOCOPY OF JUDGMNET IN OP.3311/99 DT. 22/2/2002.

EXT.P15: TRUE COPY OF DETAILS OF WORKS DONE.

EXT.P16: TRUE COPY FO PROCEEDINGS DT. 24/1/2003.

EXT.P17: COMMUNICATION DT. 21/2/86.

EXT.P18: PHOTOCOPY OF M BOOK.

EXT.P19: TRUE COPY OF JUDGMENT IN WA.1945/2002.

A.K. Basheer, J.

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W.P(C) No.23511 of 2003

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Dated this the 18th day of August, 2006.

J U D G M E N T

According to the petitioner he was elected as the Convener of a Beneficiary Committee which was entrusted with the construction of Panamkutty-Kamblikandam public road in the year 1981. The construction of the said road was included under the N.R.E.P Scheme. The construction was sanctioned for a total cost of Rs.1,99,000/-. By order dated February16, 1982, the District Collector, Idukki, respondent No.2 herein, accorded sanction to the Block Development Officer, Adimali to release payment of an advance of Rs.15,000/- to the petitioner, the Convener of the Committee. A photocopy of the said proceedings of respondent No.2 is on record as Ext.P1.

2. It is contended by the petitioner that he had completed the work to the satisfaction of the authorities concerned. According to him, the road in question has a total length of 4.2 kms. It connects Kambilikkandom with Panamkutty. There were 8 reaches of around 500 meters each. He contends that in addition to those 8 reaches, two more additional works for strengthening and protecting the sides of the road at a length of 3000 meters were also entrusted to him. The Officers in charge measured only the first 3 reaches and the remaining reaches were not measured. The Officers entrusted the work of "black topping" to another person without finalising the bill of the petitioner. Petitioner was assured that his payment would be made very soon. On the strength of that assurance petitioner had borrowed funds from his friends and relatives and had completed the

work. But the grievance of the petitioner is that measurement of the work was not taken. The 3 primary prayers in the writ petition are extracted hereunder:

> "I. To call for the records relating to the passing of Ext.P16 order of the 2nd respondent and to quash the same by issuing a writ of certiorari or other appropriate order or direction directing to the respondents.
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> II. Issue a writ of mandamus or other appropriate writ or order or direction directing the respondents to quantify the additional work done by the petitioner on the Panamkutty-Kamblikandam road, in a proper manner with the presence of the petitioner and to work out the balance due to the petitioner.
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> III. Issue a mandamus or other appropriate writ or order or direction directing to settle the claim of the petitioner after the proper quantification of the work done by the petitioner on the Panamkutty-Kambilikandam road, with immediate effect."

3. In the counter affidavit respondent No.4 has contended that the petitioner had completed the work relating to only first 3 reaches of the road and additional work in chainage 0/000 to 1/500 and the work relating to the balance reaches were only partially completed. The Subordinate Judge, Kattappana in OS. 382/94 had found that the work quantified by the authorities was perfectly correct and the excess liability fixed on the plaintiff (petitioner) was fully supported by facts and figures in the file produced by the Department. The Court further held that the claim made by the petitioner was totally unsustainable. Accordingly the suit was dismissed. The decree and judgment had

become final.

4. I have carefully perused Ext.P16 order which is sought to be quashed in this writ petition. In the said order respondent No.2, the District Collector, has elaborately dealt with the entire aspects of the issue. It is seen mentioned in the order that pursuant to the judgment in OP.459/99 steps were taken to quantify the work done by the petitioner. It was found that the petitioner was liable to pay an amount of Rs.1,86,140 to the Government, being the excess payments received by him. Against the said quantification, petitioner had filed OP.8867/89. Pursuant to a direction issued by this Court in the said Original Petition, the District Collector had taken measurements afresh with the help of his subordinates, in the presence of the petitioner. After taking fresh measurements, the District Collector found that the petitioner was entitled to get a reduction of Rs.12,997/- from the amount of Rs.1,86,140 which was quantified earlier as petitioner's liability. Accordingly a revised order was issued in the light of the re-quantification.

5. Thereafter petitioner had filed OS.382/94 before the Subordinate Judge's Court, Kattappana against the above proceedings of the District Collector. The Court had found that the District Collector had settled the claim of the petitioner after observing all legal formalities and also after giving the petitioner sufficient opportunity to be heard. It was also noticed by the court that the proceedings were completed by the District Collector after inspecting the site and taking fresh measurements of the work with the help of his subordinates in the presence of the petitioner. Thus the court upheld the order passed by the District Collector.

6. Having perused the impugned order and the other relevant

materials on record carefully, I do not find any reason to invoke the discretionary jurisdiction of this Court in this case under Article 226 of the Constitution and that too at this distance of time. The prayer to quash Ext.P16 order cannot be sustained at all, particularly for the reason that the civil court had already found that the District Collector had finalised the proceedings after taking fresh measurements in the presence of the petitioner himself and after affording him sufficient opportunity.

7. The second prayer in the writ petition is to issue a writ of mandamus or such other direction to respondent No.1 to quantify the additional work done by the petitioner on the road in question. This writ petition was filed in the year 2003 and the work had admittedly been completed way back in the year 1982-83 or shortly thereafter. As noticed already, the District Collector had conducted a site inspection and taken fresh measurements with the help of officials. Therefore the prayer to issue a direction to quantify the additional work allegedly done by the petitioner yet again is totally misconceived.

8. The third prayer in the writ petition is to issue a direction to the respondents to settle the claim of the petitioner after proper quantification of the work. Yet again, the relief claimed is entirely misconceived and untenable for the very same reasons stated above.

There is no merit in any of the contentions raised by the petitioner. Writ Petition fails and it is accordingly dismissed.

A.K. Basheer
Judge.

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